

Regulatory Framework for the Human Organ Trafficking in India

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Abstract

Organ Transplantation involves a surgical procedure wherein a new organ replaces a deteriorating or damaged organ in the human body. An organ can be explained as a mass of highly specialized cells and tissues working collectively to execute specific functions in the human body. Transplantation of Human Organs is an effective lifesaving treatment recognized the world over. One of the major problems faced by healthcare providers globally is the acute shortage of legally obtained organs, cells and tissues. This is the main reason when the crime of illegal trafficking of human organ emerges and boom. At this point of time the most effective machinery that is police administration, legislative, judicial and societal action is needed to regulate this menace.

Keywords: Organ transplantation, Health issues, Donors, Commercial dealing in transplantation

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INTRODUCTION

Organ transplantation offers the hope of life for people suffering from a wide range of disease that lead to end-stage organ failure and death. The development of new transplantation specialties such as stem cell transplantation, will also give new hope to millions suffering from cancer, spinal cord injuries, neurological disorders and a host of other debilitating and often deadly maladies [1]. It involves a surgical procedure wherein a new organ replaces a deteriorating or damaged organ in the human body. An organ can be explained as a mass of highly specialized cells and tissues working collectively to execute specific functions in the human body [2]. Heart, lungs, kidneys are examples of such organs. They are composed of tissues and cells which work together to perform specific essential functions in the human body.

The transplantation of human tissue (including organs) from one person to another can have dramatic benefits for the recipient, and often prevent an early death or substantially improve quality of life. As in other medical procedures, however, it is essential that the donor of tissue freely consents; in this case, to the removal of tissue from his or her body. In the absence of

informed consent from the donor, those involved in arranging and conducting the transplantation procedure may be liable to compensate the donor as well as face criminal proceedings [3].

INTERNATIONAL PERSPECTIVE

Countries worldwide suffer from scarcity of organs for transplantation. Many more patients need organs for transplantation than are available through organ donation and the gap between supply and demand continues to get wider. To increase the rate of organ donation, policy makers have looked towards increasing people's awareness of organ donation as well as implementing policies that are based on different levels of autonomy [4].

Transplantation of Human Organs is an effective life-saving treatment recognized the world over. The ground level access to organ transplantation as lifesaving treatment to patients depends on the various national scenarios and further depends on the technical expertise of the professionals and the cost of healthcare in the country [5].

One of the major problems faced by healthcare providers globally is the acute shortage of

legally obtained organs, cells and tissues. In many countries, the success of the deceased organ donation programs is hindered by the sociological, cultural and legal factors. Countries which are developed, which boast increased rates of deceased organ donation, also fail to meet the ever-increasing requirement for organs and tissues [6].

This shortage of legally obtained organs, cells and tissues has become a breeding ground for the growth of the international organ trade. The international organ trade has been acknowledged to be a significant health policy issue in the international community. Potential recipients travel abroad to countries with dubious record of enforcement of legal provisions prohibiting commercialization of organ donation and purchase organs [7].

LEGISLATIVE PROVISIONS REGULATING THE ORGAN TRANSPLANTATION

The prime directive of the Transplantation of Human Organs Act, 1994 was to “provide for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs.” Besides specifying the authorities legally allowed to excise the organs from the human donors, the Act also provides for banking the same in duly registered hospitals. Strict penal provisions have been provided in the Act for any contraventions and deviations from the set law including any kind of illegal trade in human organs or tissues. The Act for the first time established an institution-based structure for the regulation and authorization of organ transplantation. The Transplantation of Human Organs Act, 1994 was the first legislation in India to recognize the concept of ‘brain death’ and legalize the removal and transplantation of organs from brain dead patients or cadavers. This step was taken to bridge the gap between the demand and supply of viable organs and also to curb commercialized organ trading. The Act allowed two types of donors as (1) Near Relatives including children, siblings, parents and spouse. (2) Live donors who are not near relatives but are willing to donate their organs to recipients because of ‘affection or attachment or for any other special reason’. These donations were, however, required to be approved by the Authorization Committee.

However, the offence of organ trading was made non-cognizable. Therefore, the police were not allowed to investigate the complaints against organ trading independently, without any complaint being submitted by the Appropriate Authority set up under the Act or any complaint by an individual who has given at least 60 days prior notice to the Appropriate Authority. Another provision of the Act aimed at regulating the removal and transplantation of organs was regarding the registration of hospitals and healthcare institutions providing organ transplantation programs. These institutions and hospitals were required to maintain the requisite level of facilities and efficient staff for carrying out the transplantation procedures. The Appropriate Authority appointed by the Government was vested with the power to grant registration to the hospitals and healthcare institutions fulfilling the prescribed criteria [8].

The Transplantation of Human Organs Act, 1994 as amended by the Transplantation of Human Organs and Tissues Act, 2011 to reorganize and restructure the organ donation and transplantation program in the country. The Act aims to: Regulation of removal, storage and transplantation of human organs for therapeutic purposes; Prevent all or any kind of commercial dealings in human organs and for matters connected therewith or incidental thereto and make brain death acceptable and make it possible for these patients to be viable potential organ donors. The Act legalised the idea of brain death and their use as potential organ donors for the first time in India. The passing of this legislation had made possible organ donation from patients that have been declared ‘brain dead’.

ETHICAL ISSUES GOVERNING ORGAN TRANSPLANTATION

Organ Donation and Transplantation, although a boon for many, has its own specific evils in a country like India, where there is no shortage of the poor and no limit on the ability of the rich to exploit and benefit from poverty. Lack of government mandated health insurance programs coupled with the growth of the middle class and advancements in organ transplantation procedures, has led to one inevitable outcome – commercialization of

organ donation and transplantation. With no limit on the amount of money that the rich are ready to pay for organs and unlimited number of poor, ready to get exploited, population in India, this country is the hot bed of global organ trade [9].

People in India be it rich or middle class, when faced with the last option of organ transplantation as a means of saving their loved one's life, always have this question in mind – "Why should someone in the family, related to the patient, put his or her life in danger by donating an organ?" They then answer this question with the one answer that is both illegal and unethical, but disgustingly acceptable in society – "Let's buy the organ from someone who is in desperate need of money" [10]. With a billion strong country, there is no shortage of poverty-stricken people ready to sell their organs for money to solve their short-term problems. This makes organ trade in India a dangerous societal issue quite different from other socially exploitative problems. The reason this problem is unique is because it involves an extremely invasive surgical procedure that can only be carried out by highly trained professionals with help from every level of social system including law enforcement agencies [11].

It is a definite study and survey that has been recorded that most donors have led to poor health potential in post-operative periods in organ donation, which is run by profit. On the other hand, charity is inspired by philanthropy intentions, which is a good experience to feel connected to them. Although such results are conclusive, their estimates can really be true in India's unique circumstances.

There are observations that the people of India are sensitive to diabetes and hypertension, so donating organ donations for economic benefits usually has a negative impact [12].

CONCLUSION

Organ transplantation is more than a discovery; it is a gift of science to humanity. Advancements of this branch of science have made possible the greatest of medical miracles. However, despite its success and the ability to save precious lives of near and dear ones, the awareness of the same is still its

weakest link. The consciousness of the beauty of organ transplantation and the aspect selfless altruism connected with it needs to be spread amongst the human community. The utility of such a phenomenon is nothing but equivalent to divine Act of God.

To facilitate the endorsement of organ donation, various countries around the world have carried out variety of processes. The most apt method of augmenting such a practice and creating awareness is by working in tandem with various non-profit organizations. The Governments all over the world, with the service of newspapers, media and NGOs need to spread awareness pertaining to this miracle.

However, since every aspect must be viewed from an objective point of view, it cannot be denied that certain negative features have also crawled into this process of organ transplantation. Organ Transplantation legislation around the world have always focused on ensuring that the bonafide donors and recipients along with their family members and the physicians, are protected from being exposed to the inevitable ills of organ transplantation like illegal organ trade. These laws also regulate the whole process and procedures relating to organ transplantation, thereby safeguarding that malpractices do not creep in the system. However, since these procedures require human involvement, it is almost impossible to completely eradicate the inevitable evils of this procedure as human greed, unethical practices and option of exploiting some other for your own gain can never be completely ruled out.

Unfortunately, the bright scenes described above are great, but the practice of cutting off organs unauthorized is not definite. As per the report of United Nations, "smuggling of organs is a crime that occurs in three broad categories." Generally, kidneys and liver organs are traded. For the first category of business, force the criminal organ, smuggler force or force the victims to leave the body.

In the second category, victims formally or informally agree to sell an organ and are cheated because they are not paid for the organ or are paid less than the promised price. And

in the third category, vulnerable people, including as migrants' workers, the homeless, or the illiterate, are treated for an ailment which may not even exist and then their organs are removed without their knowledge [13]. The business includes human trafficking networks, mobile surgeons, brokers, patients and vendors.

Sellers include poor nationals, new immigrants, global guest workers, or political and economic refugees recruited from abroad to serve the needs of transplant tourists in countries that tolerate or actively facilitate the illegal transplant trade [14].

Organ transplantation is one of the remarkable success stories in the history of medicines. Transplantation is the only hope for thousands of people suffering failure. Unfortunately, the need for donated organs is much greater than supply. This is the main reason when the crime of illegal trafficking of human organ emerges and boom. The need of the hour is that the most effective machinery that is police administration, legislative, judicial and societal action must be needed to regulate this menace.

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